

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6931

BILL NUMBER: SB 324

NOTE PREPARED: Jan 6, 2009

BILL AMENDED:

SUBJECT: Real Estate Appraisals.

FIRST AUTHOR: Sen. Kruse

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: *Prohibitions-* The bill prohibits certain interested persons in a real estate transaction from influencing or attempting to influence: (1) the independent judgment of a real estate appraiser; or (2) the development, reporting, result, or review of an appraisal. The bill sets forth certain acts that constitute a prohibited attempt to influence an appraiser or an appraisal.

Creditor Requirements- The bill requires a creditor that regularly issues mortgage loans in Indiana to do the following: (1) Ensure that its process for obtaining or reviewing appraisals for its mortgage loans is isolated from its mortgage loan origination process. (2) Ensure that the borrower in a mortgage loan is provided a free copy of any appraisal report concerning the subject real estate not later than three days before the loan closing. (3) Establish a toll-free telephone number and an electronic mail address for receiving complaints from interested parties concerning attempts to influence appraisals prepared in connection with the creditor's mortgage loans. (4) Report the results of the creditor's investigations of complaints received to the Real Estate Appraiser Licensure and Certification Board (REALCB). (5) Establish an appraisal review program or quality control process designed to review at least 10% of the appraisals prepared in connection with the creditor's mortgage loans. (6) Report annually to the REALCB the results of each periodic review conducted under the review program or quality control process.

Additional Prohibitions- The bill prohibits a creditor in a mortgage loan from using an appraisal report: (1) prepared by an appraiser employed by the creditor or an affiliate of the creditor; or (2) obtained through an appraisal company owned by the creditor or an affiliate; except under certain circumstances.

Control of Appraisal Company- The bill provides that certain participants in real estate transactions and members of their immediate families may not own or control a majority interest in an appraisal company.

Penalties, Actions- The bill sets forth certain penalties and enforcement procedures for violations of the provisions concerning real estate appraisals. The bill provides an individual cause of action for a person aggrieved by a violation of the provisions.

Real Estate Commission- The bill requires the Real Estate Commission (REC) to adopt, upon the written recommendation of the REALCB, rules to implement the provisions.

Effective Date: Upon passage; July 1, 2009.

Explanation of State Expenditures: *Creditor Requirements-* The REALCB would have to review complaint investigative documents from creditors. This would increase the administrative responsibilities of the REALCB, but would likely be accomplished within their existing meeting schedule. The REALCB was scheduled to meet 12 times during 2008.

The REALCB would have the option of turning over the report of a creditor to the Homeowner Protection Unit (HPU), which invariably would increase the HPU's workload. The REALCB or HPU may also turn the information over to several state or local agencies (as listed under current law) with the jurisdiction to investigate or take action. As of January 5, 2009, there were 10 Attorney General (AG) employees assigned to the HPU. As of mid 2007, the HPU had filed 287 actions with the appropriate Professional Licensing Agency (PLA) board for disciplinary proceedings. Total HPU appropriations for FY 2009 were \$63,391.

Annual Reports- If the REALCB gave the reports to the PLA for review, the PLA could require additional staff to review them. The number of potential creditor reports to be reviewed is unknown. (As of December 2008, there were 3,228 active certifications and licenses with the REALCB.) As of January 5, 2009, the PLA Real Estate division had one director, one assistant director, one litigation specialist, and four case managers on staff. Total staff costs of the division are currently \$212,700 annually. There is currently one vacancy in the division with a budgeted annual salary of approximately \$22,400. The division staffs three boards: the REALCB, the REC, and the Home Inspector Licensure Board. The PLA reverted \$514,160 at the close of FY 2008. However, recent prior-year reversions have been minimal due to the addition of several new boards and commissions, which currently total 39.

Real Estate Commission- The REC would likely be able to adopt rules to implement the provisions of the bill within the course of a regularly scheduled meeting. The REC is scheduled to meet nine times during 2009.

Explanation of State Revenues: *HPU-* The HPU Account received approximately \$558,000 in revenue during FY 2008.

Penalties, Actions-

Real Estate Investigative Fund (IF)- Under the bill, the IF would receive new civil penalty revenue established by the bill. The amount of civil penalties received under this provision would depend on trial courts. The bill specifies that a court is to award damages in priority to assessing civil penalties. Currently, the IF receives a portion of the fees from real estate license applications and renewals. The IF received \$191,182 in business license revenue during FY 2008.

Criminal Action- The bill provides for a class A misdemeanor and a Class B infraction for violation of certain provisions.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. The maximum judgment for a Class B infraction is \$1,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 (misdemeanor) or \$70 (infraction) court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Penalties, Actions-* A Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Penalties, Actions-* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 (misdemeanor) or \$70 (infraction) court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: REC, REALCB, PLA, AG (HPU), any agency listed under IC 4-6-12-4.

Local Agencies Affected: Trial courts, local law enforcement agencies, any agency listed under IC 4-6-12-4.

Information Sources: State Budget Agency: *General and Rainy Day Fund Summaries, June 30, 2008. State of Indiana List of Appropriations Made by the 2007 Indiana General Assembly for the Biennium July 1, 2007, to June 30, 2009;* Attorney General news release April 2007, Budget Agency Auditor's Database; Staffing Report, January 5, 2009.

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